SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 214.

GEORGE ALLMAN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JANUARY 8, 1888.

I.—*Petition.* *Filed January* 31, 1885.

1 In the Court of Claims.

GEORGE ALLMAN
vs.
THE UNITED STATES. } No. 14533.

To the honorable the judges of the United States Court of Claims:

Your petitioner, George Allman, of San Francisco, in the State of California, respectfully represents:

I. That in accordance with a proposal made by your petitioner to the Postmaster General of the United States at the annual letting of contracts for the transportation of the mails of the United States, in the year 1878, a contract was awarded to your petitioner by the said Postmaster General for the transportation of the mails of the United States upon the route numbered 46210, from Duncan's Mills, in the State of California, to Mendocino City, in said State, a distance of 97½ miles, said mails to be transported from Duncan's Mills to Mendocino City and back to Duncan's Mills six times in each week during the continuance of said contract, making six trips each week, the time of transportation between said termini being fixed at thirty-six hours, said contract to continue in force for the period of four years from the first day of July, 1878, namely, to July 1, 1882, and your petitioner to be paid the annual sum of $4,490 for the services therein engaged to be performed.

2 II. That said contract was by the said Postmaster General prepared in form and duly executed by him and by your petitioner and his sureties, according to law, a copy of which said contract is hereto annexed, marked "A."

III. That on the first day of July, A. D. 1878, your petitioner commenced service under said contract, and continued such service until the termination of said contract term on the first day of July, 1882.

IV. That on the 21st day of February, 1881, the said Postmaster General made and promulgated an order, numbered 1718, to take effect from the 22d day of February, 1881, whereby the said Postmaster General directed that the service under said contract should be increased by one additional trip per week, and allowed your petitioner the additional sum of $748.33 per annum, being a *pro rata* increase of the compensation for service under said contract, computed upon the rate of compensation fixed by the said contract.

V. That by the said order, numbered 1718, the said Postmaster General reduced the running time between the termini of the route aforesaid from 36 to 28 hours, thereby increasing the amount and expense of the service to be performed under said contract as increased as aforesaid; that said order allowed to your petitioner the annual sum of $2,619.16 for additional pay for the reduction of the time of transportation as aforesaid, which allowance, as appears by said order, was less than a *pro rata* increase of the contract price propor-

tioned to the additional stock and carriers necessarily employed therein.

VI. That your petitioner conformed to said order, and in accordance with its requirements performed the service demanded thereby from the 22d day of February, A. D. 1881, down to and until the first day of November, A. D. 1881, when the extent of service under said contract was changed as hereinafter stated.

VII. That on the 10th day of October, A. D. 1881, the said Postmaster General made and promulgated an order numbered 14304, whereby it was ordered that the service under said contract
3 should be reduced to six trips per week, and did direct that the sum of $748.33 should be deducted from the annual pay of your petitioner, and did further direct that one month's extra pay, computed upon the annual sum of $748.33, should be allowed to your petitioner under said contract in consequence of the decrease of service thereunder as established by order No. 1718.

VIII. That said Postmaster General, although bound to pay your petitioner as hereinafter stated, in accordance with order No. 1718, to November 1st, 1881, has withheld from your petitioner part of said sum, namely, the sum of $256.63, and also the sum of $31.18, being one month's allowance for expedition on the trip discontinued as aforesaid, claiming that the amount allowed by order No. 1718 for reduction of the time of transportation was in excess of that allowed by the second section of the act of Congress entitled "An act to provide for a deficiency in the appropriations for the transportation of the mails on star routes for the fiscal year ending June 30th, 1880, and for other purposes," approved April 7th, 1880, whereas your petitioner alleges that said allowance was in conformity to said act; that in furtherance of said opinion of the Postmaster General he, the said Postmaster General, did, on the 1st day of August, 1881, make and promulgate an order, numbered 10743, whereby he directed that said order No. 1718, of February 21st, 1881, should be modified so as to allow $2,445 instead of $2,619.16 per annum for additional compensation for expedition.

IX. Your petitioner avers that the sums of $256.63 and $31.18, making in all $287.81, have been unlawfully deducted by the said Postmaster General from the amount due under said contract in the manner hereinbefore stated.

X. Your petitioner further represents that in accordance with a proposal made by your petitioner to the Postmaster General of the United States at the annual letting of contracts for the transportation of the mails of the United States, in the year 1878, a further contract was awarded to your petitioner by the said Postmaster Gen-
eral for the transportation of the mails of the United States
4 upon the route numbered 46211, from Cloverdale, in the State of California, to Navarro Ridge, in said State, a distance of 59 miles; said mails to be transported from Cloverdale to Navarro Ridge and back to Cloverdale once a week during the continuance of said last-mentioned contract, making one trip each week, the time of transportation between said termini being fixed at 34 hours; said last-mentioned contract to continue in force for four years from

the 1st day of July, 1878, namely, to July 1st, 1882, and your petitioner to be paid the annual sum of $699.00 for the services thus engaged to be performed.

XI. That said last-mentioned contract was by the said Postmaster General prepared in form and duly executed by the said Postmaster General and by your petitioner and his sureties, according to law; that said last-mentioned contract contained all and the same clauses, conditions, and covenants contained and set forth in the copy contract hereto annexed, marked "A," as applied to the said route No. 46211, and the terms of transportation and payment hereinbefore set forth in regard to said last-named route.

XII. That on the first day of July, A. D. 1878, your petitioner commenced service under said last-mentioned contract, and continued said service until the termination of said contract term on the first day of July, 1882.

XIII. That on the 16th day of November, 1878, the said Postmaster General made and promulgated an order, numbered 10131, to take effect from December 1st, 1878, whereby the said Postmaster General directed that the service under said last-mentioned contract should be increased by one additional trip per week, and allowed your petitioner the additional sum of $699.00 per annum, making a *pro rata* increase of the compensation for service under said contract, computed upon the rate of compensation fixed by the said contract.

XIV. That on the 13th day of October, A. D. 1880, the said Postmaster General made and promulgated a further order, numbered 13519, to take effect from January 1st, 1881, whereby the said Postmaster General directed that the service under said last-mentioned contract should be increased to three trips per week, and allowed your petitioner the additional sum of $699.00 per annum, making a *pro rata* increase of the compensation for services under said contract, computed upon the rate of compensation fixed by the said contract.

XV. That on the 25th of February, 1881, the said Postmaster General made and promulgated a further order, numbered 1862, to take effect from March 1st, 1881, whereby the said Postmaster General directed that the services under said last-mentioned contract should be increased four trips per week, and allowed your petitioner the additional sum of $2,796 per annum, being a *pro rata* increase of the compensation for services under said contract, computed upon the rate of compensation fixed by the said contract.

XVI. That under the operation of said orders the service under said last-mentioned contract, at and from the said first day of March, consisted of seven trips per week, for which, under said contract, your petitioner was entitled to receive at the rate of $699.00 per annum for each trip, making in all the annual sum of $4,893.

XVII. That by said last-mentioned order, numbered 1862, the said Postmaster General reduced the running time between the termini last aforesaid of the route numbered 46211 from 34 to 18 hours, thereby increasing the amount and expense of the service to be preformed under said last-mentioned contract as increased as aforesaid; that said last-mentioned order further allowed to your petitioner the annual sum of $2,446.50, said order stating that such

allowance was fifty per centum of the original cost of the service, but less than a *pro rata*, as shown by the sworn statement of the carrier; that said allowance was, in fact, less than the amount demanded by the increase of the stock and carriers necessarily employed therein, based on the rate of compensation fixed by said contract for route numbered 46211.

XVIII. That your petitioner conformed to said orders, and in accordance with their requirements performed the service demanded thereby to and until the expiration of said last-mentioned contract.

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XIX. That said Postmaster General, although bound to pay to your petitioner, as hereinbefore stated, the sum of $2,446.50 per annum from the first day of March, 1881, to the expiration of said contract last mentioned, being part of the sum demanded, has withheld from your petitioner part of said sum, namely, the sum of $2,796.00, claiming that the amount allowed for that purpose by order No. 1862, for the reduction of the time of transportation, was in excess of that allowed by the second section of the act of Congress hereinbefore mentioned by its title and date of approval, whereas your petitioner alleges that said allowance was in conformity to said act.

XX. That, in furtherance of said opinion of the said Postmaster General, he, the said Postmaster General, did, on the first day of August, 1881, make and promulgate an order, numbered 10744, whereby he directed that said order No. 1862 should be modified so as to allow your petitioner the sum of $349.50 per annum instead of the sum of $2,446.50 per annum additional compensation for expedition.

XXI. Your petitioner avers that the sum of $2,796 has been unlawfully deducted by the said Postmaster General from the amount due under said last-mentioned contract in the manner herein stated.

XXII. Your petitioner further alleges that the said Postmaster General has unlawfully deducted and withheld from the sums of money due to your petitioner under his said contracts, hereinbefore stated, the sums of money hereinafter stated—that is to say, from the amount due under the contract for route No. 46210, as aforesaid, the sum of $499.48, and from the amount due under the contract for route No. 46211, set forth as aforesaid, the sum of $21.84, and has neglected and refused to pay the same to your petitioner; that said Postmaster General alleges, as the reason for deducting the sums of money last mentioned from the compensation due to the said petitioner under his said contracts, that on various days during the said contract terms the said petitioner did not cause the mails to be carried between the termini of the said routes in the times fixed for that purpose by the orders of the Postmaster General as aforesaid. Your petitioner admits that on the days in respect of which deductions have been so as aforesaid made by the said Postmaster General delays occurred in the transportation and delivery of the mails aforesaid, but he avers that on each of said days the mails delivered to said petitioner were carried to their proper destina-

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tion as directed under the authority of the said Postmaster General; that said petitioner carried all the mails delivered to him on the said last-mentioned days with certainty, celerity, and security, and did use therefor all such means as were necessary to transport the whole of said mails during the terms of said contracts and within the times fixed in the schedules of departures and arrivals annexed to said contracts, and on each of said days used due diligence to transport the said mails within the times prescribed by said schedules, but that the delays that occurred as aforesaid were occasioned by unavoidable obstructions occasioned by storms, rendering the post roads impassable, and that every mail was carried to its proper destination as soon as such obstructions could by diligence be overcome.

XXIII. The petitioner avers that although detentions occurred as aforesaid in the delivery of the mails on the days last aforesaid, yet no trip called for by either of said contracts was left unperformed, but each of said trips was performed in accordance with said contracts.

XXIV. That your petitioner has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

XXV. Your petitioner further states that there has been no assignment nor transfer of its said claim, nor of any part thereof or interest therein; and that said claimant is justly entitled to the amount claimed from the United States herein, after allow-
8 ing all just credits and offsets, and that he believes the facts as stated in this petition to be true.

Your petitioner therefore prays judgment for the sum of three thousand six hundred and five dollars and thirteen cents.

SAMUEL M. LAKE,
Attorney for Claimant.

CITY OF WASHINGTON,
District of Columbia, } ss:

Samuel M. Lake, attorney for George Allman, the petitioner named in the foregoing petition, being duly sworn, on his oath states that no assignment nor transfer of the said claim nor any part thereof nor any interest therein has been made; that petitioner is justly entitled to the amounts therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts stated in the said petition to be true.

SAMUEL M. LAKE.

Sworn and subscribed before me this 31st day of January, A. D. 1885.

JOHN RANDOLPH,
Ass't Clerk, C. C.

9 EXHIBIT "A" TO PETITION.

Contract.

* * * * * * *

Witnesseth: That whereas George Allman has been accepted, according to law, as contractor for transporting the mail on route No. 46210, from Duncan's Mills, Cal., by Fort Ross, Timber Cove, Fisk's Mills, Fisherman's Bay, Gualala, Fish Rock, Punta Arenas, Manchester, Miller's, Cuffey's Cove, Navarro Ridge, Albion, and Little River, to Mendocino City and back, six times a week, by a schedule satisfactory to the Department, at four thousand four hundred and ninety dollars per year, for and during the term beginning July first, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eighty-two: Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America and do bind themselves—

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion if its weight, bulk, or safety shall so require; and that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs or is concerned in running on the route, beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips.

2d. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oil-cloth or bear-skin if carried on a horse, and in a boot under the driver's seat if carried in a coach or other vehicle.

3d. To take the mail and every part thereof from, and deliver it and every part thereof at, each post office on the route, or that
10 may hereafter be established on the route (or on any route that may hereafter be established and to which this contract may be extended as hereinafter provided), and into the post office at each end of the route, and into the post office, if one is there kept, at the place at which the carrier stops for the night, and if no post office is there kept to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail and his careful and faithful performance of the obligations assumed herein and those imposed by law; not to commit the

care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster General; not to transmit, by themselves or either of them or either of their agents, or be concerned in transmitting commercial intelligence more rapidly than by mail; not to carry otherwise than in the mail letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail locks and bags, and other postal supplies, and also the special agents of the Department, on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully to render an account thereof to the Postmaster General in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post Office Department, on the order of the Postmaster General, all balances remaining in his hands.

For which services, when performed, the said George Allman, contractor, is to be paid by the United States the sum of four thousand four hundred and ninety dollars a year, to wit, quarterly, in the months of November, February, May, and August, through the postmasters on the route or otherwise, at the option of the
11 Postmaster General; said pay to be subject, however, to be reduced or discontinued by the Postmaster General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase, decrease, or extend the service in accordance with law, he allowing a *pro rata* increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with and a *pro rata* compensation for the service retained: Provided, however, That in case of increased expedition the contractor, may upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid that they shall forfeit—

1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail, or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation;

or carrying, otherwise than in the mail, matter which should go by mail, or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency in due time to the Postmaster General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount, in the
12 discretion of the Postmaster General, according to the nature or frequency of the failure and the importance of the mail: Provided, That, except as herein otherwise specified and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress, and whenever, in the opinion of the Postmaster General, the service cannot be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress, approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress, approved June eighth, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post Office Department."

* * * * * * *

13 II.—*General Demurrer. Filed Feb'y* 26, 1885.

And the said defendants, by their Attorney General, say that the

petition in this cause does not allege facts sufficient to constitute a cause of action.

THOMAS SIMONS,
Assistant Att'y General.

III.—*Argument and Submission on Demurrer.*

At a Court of Claims held in the city of Washington on the 13th day of April, A. D. 1885, in the cause aforesaid, the demurrer to the petition herein was argued by Mr. Blair, for the defendants, for the demurrer, and Mr. Willard opposed, and submitted.

14 IV.—*Demurrer Sustained.*

At a Court of Claims held in the city of Washington on the 27th day of April, A. D. 1885, in the cause aforesaid, the Chief Justice announced the decision of the Court, and it was ordered that the demurrer of the defendants to the claimant's petition be sustained.

V.—*Judgment Dismissing Petition.*

At a Court of Claims held in the city of Washington on the 26th day of October, A. D. 1885, the demurrer of the defendants, in the cause aforesaid, to the claimant's petition having been heretofore sustained, upon the statement of counsel for the claimant that leave to amend will not be asked, it was ordered that the petition of the said claimant, George Allman, be dismissed.

(The Court filed no opinion in this case.

JOHN RANDOLPH,
Ass't Cl'k C't of Claims.)

15 VI.—*Application of Claimant for and Allowance of Appeal.*

GEORGE ALLMAN
vs.
THE UNITED STATES. } No. 14533.

From the judgment rendered in the above-entitled cause, on the twenty-sixth day of October, A. D. 1885, in favor of the defendants, the claimant, by Samuel M. Lake, his attorney, on the 21st day of January, A. D. 1886, makes application for and gives notice of an appeal to the Supreme Court of the United States.

SAM. M. LAKE,
Att'y for Claimant.

Filed January 21, 1886.

And now, to wit, January 21, 1886, it is ordered by the Court that the appeal be allowed as prayed for.

16 In the Court of Claims.

GEORGE ALLMAN
vs.
THE UNITED STATES. } No. 14533.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the judgment of the court sustaining the demurrer and dismissing the petition, of the application of the claimant for an allowance of appeal to the Supreme Court of the United States and the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 22nd day of January, A. D. 1886.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Court of Claims. No. 214. George Allman, appellant, *vs.* The United States. Filed January 22, 1886.

IN THE

Supreme Court of [illegible]

OCTOBER TERM, [illegible]

GEORGE [illegible]

vs.

THE UNITED [illegible]

BRIEF FOR [illegible]

A. J. WILLARD,
Of Counsel.

pensation for any additional service thereby required, or for increase of speed if the employment of additional stock or carriers is rendered necessary."

Subsequent to the execution of these contracts, and while the service under them was being rendered, the Postmaster-General increased both the number of trips per week and the speed required in both, raising the number of trips in each to seven, and materially shortening the time of transportation. By the orders effecting these changes there was allowed for increased speed additional sums as follows: On route No. 46,210, $2,619.16 per annum, and on route No. 46,211, $2,446.50 per annum. Upon the issuing of the orders increasing the speed and fixing the allowances therefor, it was the right of the appellant under the contracts (record, p. 7,) to relinquish such contracts if dissatisfied with the allowances therefor, but being satisfied with the sums thus allowed he continued the service. As to the allowance for expedition under both contracts the petition states that the sums allowed were less than the pro rata amount demanded by the increase of the stock and carriers rendered necessary, and the demurrer admits this fact.

Subsequent to the order reducing the time of transportation on route 46,210 the number of trips per week was reduced to six, that number remaining until the end of the contract, together with the seven trips ordered on route No. 46,211.

The claims growing out of the reduction of the allowance for increased expedition are two in number, one of which is for a balance of the one month's extra pay withheld upon the discontinuance of one of the trips on route No. 46,210, and the other is for the difference growing out of the diminished allowance for expedition for that part of the service that was continued to the end of the term. Both of these claims depend upon the construction of the act of 1880 already referred to.

Another claim was for sums of money withheld upon the alleged ground that delinquencies had occurred on the part of the claimant, for which penalties were imposed equal to the sums withheld. The petition avers that no delays in the trans-

portation and delivery of the mails occurred but such as arose from unavoidable obstructions occasioned by storms rendering the roads impassable, and that every trip was made and every mail carried to its proper destination as soon as such obstructions could by diligence be overcome. The petition also denies the existence of negligence on the part of the claimant, and these facts are admitted by the demurrer.

As it regards the allowance for expedition the only question is, whether the act of 1880, in referring to the compensation provided by the contracts as the means of estimating the allowance for expedition, referred to it as a *rate* or as an aggregate sum. The act fixes the standard by which the allowance is to be limited as "a *rate* of pay not exceeding 50 per centum upon the contract as originally let." It does not say upon the *contract price*, so as to make a specified sum the means of measure, but it refers to the "*rate* of pay" upon the contract, thus bringing the whole scope and purpose of the contract into consideration; the omission of a reference to price points to the conclusion just stated. The nature of the contract peecluded the fixing of a specific sum as the compensation of the contractor, as the extent of the service to be performed was left wholly with the Postmaster-General, and the contract expressly provides that all iucrease of service shall be at the *rate* prescribed by it. As it regards the extent of the service that should be performed under it the contract simply furnishes a rate of compensation, and the act referring to the contract as a whole should be construed in the same manner.

The nature of the authority reserved by the Postmaster-General renders the construction that has been indicated the only possible construction. The nature of this authority is illustrated in the instance of the contract on route No. 46,211, in which case the number of trips was increased from one to seven. The contract in that case gives the compensation for a service of one trip per week, with authority to the Postmaster-General to increase the number of trips indefinitely. The contention of the Government as affecting that route is, that

under the operation of the act, while the Postmaster-General might increase the number of trips indefinitely, as he did in fact by increasing it from one to seven, and might require the mails to be expedited on all such trips, yet that he had no power to allow for the increased expedition more than 50 per cent. of the original contract price for a single weekly trip. It cannot be that the act intended any such manifest injustice, and this Court cannot with propriety ascribe any such intention to the purpose of the act.

Whether this question is viewed from the standpoint of technical construction or with the larger purpose of effectuating a reasonable and just intention fairly within the language of the act, the same conclusion must be reached, and that conclusion supports the contention of the appellant, and must lead to the reversal of the judgment of the Court of Claims.

The impropriety of allowing cases that have once been finally decided in a Department to be reopened upon an altered view of the construction of a law has been fully recognized. But here is a case in which a statute has been construed, a contract let and accepted by the contractor upon the basis of that construction, and where the construction of such statute is changed after large services have been performed under it, and such a reduction made from the compensation that had it been stipulated at the time when the contractor had a right to relinquish the contract, he most certainly would have done so rather than undertake a ruinous duty.

The part of the appellant's claim that relates to the deductions made for alleged delays in the transportation of the mails arises under paragraph XXII of the petition, (record, p. 4.)

The question as there presented is whether delays in the performance of trips occasioned by natural causes beyond the control of the contractor, and without negligence on his part, and where the trip is in fact performed, though not in schedule time, are to be regarded as delinquencies for which penalties can be imposed by the Postmaster-General. What the effect of such delays is, where failures to connect with a depending mail

are involved, is not open to consideration in the present case, but is a matter that could be raised by an issue of fact upon the petition. The important question desired to be brought into discussion under the petition and demurrer is, whether the contract is to be regarded as an absolute engagement to transport the mails upon schedule time, independent of the question of delays causing a failure to connect with depending mails.

Our contention is that the contract having prescribed the penalty for delays, which is limited to the case of failure to connect with a depending mail, the whole subject of the consequences of delays where the trip is actually performed is exhaustively treated, and that the case of delay cannot be brought under the 4th clause of that part of the contract that provides for the case of violations of the contract, (record, p. 8,) as the term "other" excludes all that had previously been treated in the first, second and third clauses. The fourth clause does not define what are to be regarded as violations of the contract, but merely affords penalties in case of such violations, and therefore we must look elsewhere in the contract to ascertain what are to be regarded as violations of its provisions. The duty of the contractor, as it regards the time of performing, is fixed in the first paragraph of the contract by the general terms "using therefor such means as may be necessary to transport the whole of the mail whatever may be its size, weight, or increase during the term of this contract and within the time fixed in the annexed schedule of departures and arrivals." If these words are to be read as importing an engagement to possess and apply such means of carriage as shall be sufficient to overcome any difficulty whatever that may be encountered, whether arising from the action of the elements or public enemies, then it may be said that to fail to convey the mails to their destination in schedule time is in itself a violation of the contract. It is submitted that this is not a reasonable construction of the language used, for that would be engaging to do an impossibility, but that the reasonable construction is that the contractor should provide himself with a plant sufficient to per-

form what he engaged to perform under circumstances reasonably likely to occur. If this is the true construction of the contract then the duty enforced by it was performed, for so the petition alleges, and that fact is admitted by the demurrer.

We do not dispute the proposition that if the contractor is guilty of negligence a liability in some form arises, but negligence is excluded from the case by the denials of the petition admitted by the demurrer. That the sense of the terms used as just stated satisfies their import cannot be doubted, and no necessity can arise to give them a more stringent force, and certainly no necessity is presented for introducing a harsh and unreasonable requirement.

It is not denied that the contractor might have engaged to carry the mails within the schedule time, and in that case would not have been excused from so doing on the ground of impossibility arising from natural causes, but in that case the contract should so engage in terms. The contract was evidently prepared with a view of avoiding such extreme demands upon the contractor, general terms being employed that admit of a more limited obligation and a specific reference to delays is made with a view to define their penal consequences, in which such penalties are limited to the cases of failure to connect with a depending mail.

We submit that the judgment of the Court of Claims is erroneous, and should be reversed.

SAM'L M. LAKE,
Attorney for Claimant.

A. J. WILLARD,
Of Counsel.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY
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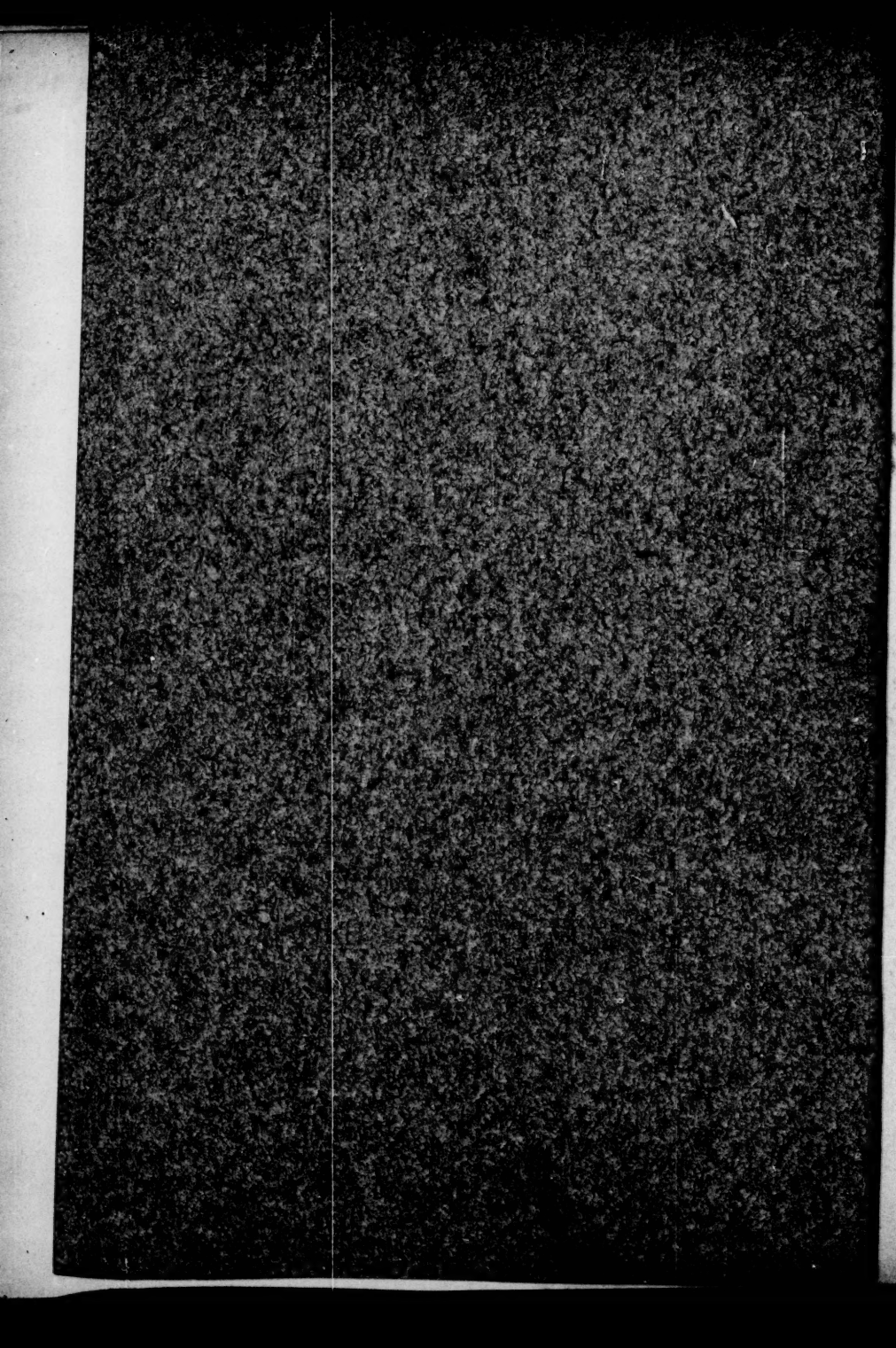
In the Supreme Court of the United States.

OCTOBER TERM, 1888.

GEORGE ALLMAN, APPELLANT,
v.
THE UNITED STATES. } No. 214.

BRIEF FOR APPELLEE.



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I.

There are three causes of action stated in the petition. The first is embraced in paragraphs I to IX, and may be stated as follows:

Claimant was awarded a contract for the transportation of the mails of the United States upon route numbered 46210, said mails to be transported six times in each week during the continuance of said contract, making six trips each week, the time of transportation between termini being thirty-six hours; said contract to continue for four years from July 1, 1878, to July1, 1882; contractor to be paid the annual sum of $4,490 (Tr., p. 1).

On February 21, 1881, by direction of the Postmaster-General, service was increased one additional trip a week and the contractor was allowed an additional sum of

$748.33 per annum, being a pro rata increase of compensation computed according to the contract. (Tr., p. 1.)

On February 21, 1881, by the same order, above referred to, the Postmaster-General reduced the running time between the termini from thirty-six to twenty-eight hours and allowed to the contractor the annual sum of $2,619.16, for additional pay for said reduction, which increased compensation was computed upon the original contract allowance plus the amount allowed for the additional trip. (Tr., p. 1.)

On August 1, 1881, this above mentioned order of February 21, 1881, was modified by the Postmaster-General, who directed that the amount allowed for expedited service should be computed upon the original contract allowance, instead of upon the amount of that allowance increased by the sum given for the additional trip.

On October 10, 1881, the additional trip was taken off; and the Postmaster-General directed that the sum before allowed for the additional trip, $748.33, should be deducted from the annual pay; and further directed that one month's extra pay computed upon the annual sum of $748.33 should be allowed the contractor on account of the decrease of service.

The modification of August 1, 1881, deprived the contractor of the benefits of so much of the order of February 21, 1881, as extended to the 50 per cent. of the $748.33 per annum, compensation for the additional trip from February 21, 1881, until that trip was abolished, October 10, 1881, and also of the 50 per cent. of the one month's extra pay.

II.

The second cause of action is embraced in paragraphs X to XXI of the petition and it may be stated as follows:

In the year 1878 claimant was awarded another contract for the transportation of the mails upon route numbered 46211, said mails to be transported once a week during the continuance of said contract, making one trip each week, time of transportation between termini being fixed at thirty-four hours; said contract to continue for four years from July 1, 1878, to July 1, 1882; contractor to be paid the annual sum of $699.

On December 1, 1878, by direction of the Postmaster-General, service was increased one additional trip per week, and the contractor was allowed an additional sum of $699 per annum, being a pro rata increase of compensation computed upon the rate of compensation fixed by the contract. (Tr., p. 3.)

On January 1, 1881, by direction of the Postmaster-General, service was increased another additional trip a week, and the contractor was allowed the further additional sum of $699 per annum.

On March 1, 1881, by direction of the Postmaster-General, service was increased four trips per week, and the contractor was allowed the further additional sum of $2,796 per annum, which was the pro rata increase of compensation. (Tr., p. 3.)

By this same last-mentioned order the running time between the termini mentioned in this contract was reduced from thirty-four to eighteen hours, and the con-

tractor allowed the annual sum of $2,446.50 as additional pay for said reduction, which increased compensation was computed upon the original contract allowance plus the amounts allowed for the additional trips.

On August 1, 1881, the order providing for additional pay for expedited service was modified by the Postmaster-General, who directed that this amount should be computed upon the original contract allowance instead of upon the amount of that allowance increased by the sums given for the additional trips. This modification deprived the contractor of the 50 per cent. allowed for expedition upon all sums except the amount for the one trip per week stated in the contract as originally drawn.

The claim of the petitioner in each of these causes of action is for the difference between the amount allowed for expedited service as computed at 50 per cent. of the aggregate of the original contract price and the sums allowed for additional trips, on the one hand, and the amount computed at 50 per cent. of the compensation named in the original contract, on the other. In the first cause is also included 50 per cent. of the one month's extra pay, which was withheld by the Postmaster-General.

III.

The petition was demurred to, and the statements above made are of course the statements of the petition (Tr. pp. 1–5). The first allowances by the Postmaster-General were all made after the passage of the act of April 7, 1880, an act to provide for a deficiency in the appropriations for the transportation of the mails on star routes for

the fiscal year ending June 30, 1880, and for other purposes (21 Stat., 71). The modifications and corrections made by him in the orders of August 1, 1881, were made to comply with the following provision of that statute:

> SEC. 2. That the further sum of one hundred thousand dollars be and the same is hereby appropriated as aforesaid, to enable the Postmaster-General to place new service as authorized by law:
>
> *Provided*, That the Postmaster-General shall not hereafter have the power to expedite the service under any contract either now existing or hereafter given to a rate of pay exceeding fifty per centum upon the contract as originally let.

The Attorney-General, in interpreting this statute, gave the following opinion:

> DEPARTMENT OF JUSTICE,
> *Washington, July* 20, 1881.
>
> Hon. THOMAS L. JAMES,
> *Postmaster-General:*
>
> SIR: Referring to sections 3960 and 3961 of the Revised Statutes, yours of the 6th ultimo asks whether the act of April 7, 1880, limits an allowance for expedition in carrying the mails to an amount not exceeding 50 per cent. upon the original compensation expressed in the contract, or to such contract price as increased by an additional allowance for increased service ordered under Revised Statutes, section 3960.
>
> I understand *increase* of service mentioned in Revised Statutes, section 3960, to mean an additional number of trips above that originally contracted for, and expedited service to mean a speedier performance of each trip than was originally stipulated for.

Revised Statutes, section 3960, relating to increase of service, reads as follows:

"Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service, and when any such additional service is ordered, the sum to be allowed therefor shall be expressed in the order and entered upon the books of the Department; and no compensation shall be paid for additional regular service rendered before the issue of such order."

The next section (3961), as to expediting service, reads thus:

"No extra allowance shall be made for any increase of expedition in carrying the mail unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution."

The second section of the act approved April 7, 1880, C. 48, contained this proviso:

"Provided that the Postmaster-General shall not hereafter have the power to expedite the service under any contract, either now existing or hereafter given, to a rate of pay exceeding fifty per centum upon the contract *as originally let.*" (21 Stats., 72.)

The language of the proviso to the act of April 7, 1880, is entirely unambiguous. It limits the power of the Postmaster-General to pay for expedition to "fifty per centum of the contract as originally let."

The *original letting*, and not any subsequent increase of service and pay, is made the standard of limitation. To set up any subsequent increase of the original letting as such limitation would defeat the very purpose of the statute.

For instance, under this provision, not more than $500 additional can be paid to expedite the service under a contract originally let for weekly trips at $1,000 per annum. If this service should be increased to daily trips, with a proportionate increase of compensation, such compensation would be $7,000 per annum. If, then, such increased service could be expedited to the extent of 50 per cent. of the increased sum, the sum allowed for expedition would be 350 *per cent. of the rate of pay upon the contract as originally let*, instead of but 50 per cent. of that sum, the limit declared in the proviso to the act of Congress of April 7, 1880.

Very respectfully, your obedient servant,

WAYNE MACVEAGH,
Attorney-General.

IV.

The third cause of action is in paragraphs XXII and XXIII of the petition, and is as follows:

During the times of these contracts the Postmaster-General made certain deductions from the sums due to the contractor because he had failed to cause the mails to be carried between the termini of the routes in the times fixed for that purpose by the orders of the Postmaster-General, and the petitioner claims that any and all delays were caused by unavoidable obstructions occasioned by storms, rendering the post-roads impassable, and that